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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,446	03/15/2004	Tracy Johnson	JOHN 02962 PTUS	1225
32233	7590	01/17/2006	EXAMINER	
STORM L.L.P. BANK OF AMERICA PLAZA 901 MAIN STREET, SUITE 7100 DALLAS, TX 75202			ABBOTT, YVONNE RENEE	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 01/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/800,446

Applicant(s)

JOHNSON, TRACY

Examiner

Yvonne R. Abbott

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5-10,12,14 and 15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-10,12,14 and 15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 10/11/05 have been fully considered but they are not persuasive. Applicant has amended the claims to include rigid panels, and a fully enclosed enclosure, and argues that the applied prior art either do not comprise rigid panels, or do not form fully enclosed structures. The term "rigid" as understood to mean stiff and inflexible is considered to be a relative term (such as soft, short, ...etc.), and since Applicant does not define the term further in the claim or specification, the prior art are considered to meet this claimed limitation. Furthermore, Applicant disregards the actual disclosure in the prior art (e.g. Morton col. 4, lines 15-16) that the panels are rigid, and states that they "cannot be a rigid panel as claimed". With respect to the fully enclosed feature of a portable pet bed, the Ballard reference teaches such a structure, and the claims stand rejected based on obviousness. Additionally, in response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Further, in response to applicant's arguments against the references

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individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Therefore, the claims as amended remained rejected.

Claim Objections

2. Claim 15 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 15 depends from a canceled claim 13. For the purposes of this Action, Claim 15 is considered to depend from Claim 12.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morton (6,370,715) in view of Moore (5,144,911). Morton shows a portable bed capable of being used as a pet bed comprising a generally laminar panel covered on one side with mattress pad adapted to be comfortable to a pet lying on the panel; wherein the panel is rigid (col. 4, lines 15-16) and generally rectangular and has a pair

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of long edges and a pair of short edges; a hinge (33) formed in the laminar panel and dividing the panel into first and second portions on each side of the hinge, wherein the first and second portions can be folded toward one another into a closed position, wherein in an open position, the first and second panel portions lie in a coplanar relationship; and upstanding wall panels (23,24,25) extending along a periphery of one of the portions of the laminar panel and proximal the hinge, wherein, in an open position, the upstanding wall encloses only the portion of the panel from which it extends and, in the closed position, the first and second portions of the panel and the upstanding wall define an enclosure in which items may be transported; wherein the upstanding wall extends along the long edge of the first panel opposite the hinge member and along the two short edges of the first panel; and wherein only the first panel is bounded by the upstanding wall; wherein the hinge connects one long edge of the first panel to one long edge of the second panel; and handles (34,35) with handle (35) disposed on the portion of the upstanding wall extending along the long edge of the first panel for transporting the pet bed with the panels in the closed position; and wherein a zipper closure (39) for securing the first and second portions of the panel in the closed position. Although Morton discloses a mattress pad on which an animal may lay, it is not specifically disclosed that the cushion material is fleece. Moore teaches a pet bed comprising a fleece mat (18). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide that the Morton cushion material be fleece as it is well known that fleece material is soft, and cushioning and

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provides a more comfortable surface on which to rest. With respect to the added claim feature of the closed position defining a fully enclosed enclosure, although the attachment means (39) are not shown to extend around the entire wall, this does not preclude the structure from being fully enclosed (i.e. the panel may be lifted or pulled to extend to the edge of wall (25)). Additionally, since Morton discloses that the zippers, Velcro [™] or other attachment may be provided to close the unit against itself during transport, and may act as a storage area for items such as blankets, diapers in clothes, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide that the enclosure be fully enclosed in order to keep the items from inadvertently falling out.

5. Claims 5, 6, 7, 9, 12, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Antosko (5,115,524) in view of Moore ('911). Antosko shows a portable bed capable of being used as a pet bed comprising a generally laminar panel covered on one side with mattress pad (30) adapted to be comfortable to a pet lying on the laminar panel; wherein the panel is rigid and generally rectangular and has a pair of long edges and a pair of short edges; hinges (27) formed in the laminar panel and dividing the panel into first and second portions on each side of the hinge, wherein the first and second portions can be folded toward one another into a closed position, wherein in an open position, the first and second panel portions lie in a coplanar relationship; wherein the area between hinges (27) forms a rectangular medial panel; upstanding wall panels (14,15) extend along a periphery of one of the portions of the

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laminar panel and proximal the hinge, wherein, in an open position, the upstanding wall encloses only the portion of the panel from which it extends and, in the closed position, the first and second portions of the panel and the upstanding wall define an enclosure in which items may be transported; wherein the upstanding wall extends along the long edge of the first panel opposite the hinge member and along the two short edges of the first panel; wherein the hinge connects one long edge of the first panel to one long edge of the second panel; and handles (23) disposed on the portion of the upstanding wall extending along the long edge of the first panel for transporting the pet bed with the panels in the closed position; and wherein a closure (24,25) for securing the first and second portions of the panel in the closed position. With respect to the added claim feature of the closed position defining a fully enclosed enclosure, although not shown, the Antosko structure is considered to be capable of forming a fully enclosed enclosure because it comprises elements such as the score lines (27) and slits (28) which are provided to allow the structure to fold; the extent (full, partial) of enclosure is considered dependent on the user. Although no bedding material, fleece in particular, is disclosed by Antosko, it would have been obvious to one of ordinary skill in the art to provide soft bedding material in a child's crib since Moore teaches a portable bed comprising a fleece mat (18) to provide a soft, and cushioning and comfortable surface on which to lay an animal or baby.

6. Claims 5-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trahan et al. (4,681,195) in view of Morton ('715), and further in view of Moore ('911).

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Trahan et al. show a bag convertible to a mat device capable of being used as a portable pet bed comprising a panel at least partially covered on one side with towel like material adapted to be comfortable to a pet lying on the laminar panel; wherein the panel is rigid and generally rectangular and has a pair of long edges and a pair of short edges; a hinge (shown by dotted lines) formed in the laminar panel and dividing the panel into first and second portions on each side of the hinge, wherein the first and second portions can be folded toward one another into a closed position, wherein in an open position, the first and second panel portions lie in a coplanar relationship; an upstanding wall formed by compartments (14,16,18) extending along a periphery of one of the portions of the panel and proximal the hinge, wherein, in an open position, the upstanding wall encloses only the portion of the panel from which it extends and, in the closed position, the first and second portions of the panel and the upstanding wall define an enclosure in which items may be transported; wherein the upstanding wall extends along the long edge of the first panel opposite the hinge member and along the two short edges of the first panel; wherein only the first panel is bounded by the upstanding wall; wherein the hinge connects one long edge of the first panel to one long edge of the second panel; and a handle (20) disposed on the portion of the upstanding wall extending along the long edge of the first panel for transporting the pet bed with the panels in the closed position. Trahan et al., however, does not disclose a closure for securing the first and second portions of the panel in the closed position. Morton teaches a portable infant bed comprising a zipper closure (39) for securing first

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and second panels in a closed position. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a closure means such as is taught by Morton on the Trahan et al. convertible bag in order to hold the panels together in order to prevent items contained within the bag from inadvertently falling out during transport. Although Trahan et al. discloses a towel like material and Morton discloses a mattress pad on which an animal may lay, it is not specifically disclosed that the cushion material is fleece. Moore teaches a pet bed comprising a fleece mat (18). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide that the Trahan et al. in view of Morton cushion material be fleece as it is well known that fleece material is soft, and cushioning and provides a more comfortable surface on which to rest.

7. Claims 5-7, 9, 10 and 12, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ballard (4,198,718) in view of Morton ('715), and further in view of Moore ('911). Ballard discloses a portable folding bed capable of use for a pet comprising a generally laminar panel at least partially covered on one side with cushion material (21) adapted to be comfortable to a pet lying on the laminar panel; a hinge formed in the laminar panel and dividing the panel into first and second portions on each side of the hinge, wherein the first and second portions can be folded toward one another into a closed position; wherein the hinge member connects one long edge of the first portion or panel to one long edge of the second portion or panel; an upstanding wall (14) extending along a periphery of one of the portions of the laminar

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panel and proximal the hinge, wherein, in an open position, the upstanding wall encloses only the portion of the panel from which it extends and, in the closed position, the first and second portions of the panel and the upstanding wall define an enclosure in which items may be transported; and a handle (18) formed on the upstanding wall for transporting the pet bed with the panels in the closed position; wherein the bed forms upper (11), lower (12) and rectangular medial (10) panels sections. Ballard, however, does not disclose a closure for securing the first and second portions of the panel in the closed position; nor does Ballard disclose that the upper and lower panel sections are rectangular. Morton teaches a portable infant bed comprising a zipper closure (39) for securing first and second panels in a closed position. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a closure means such as is taught by Morton on the Ballard portable bed in order to ensure that the sections remain nested and held together such that articles contained within do not inadvertently fall out during transport. With respect to the rectangular panel sections, to change the shape of the upper and lower panels from semi-circular to rectangular is considered to be a design modification that would have been obvious to one of ordinary skill in the art at the time the invention was made to accommodate a larger animal, for aesthetic purposes, or for convenient storage. Although Ballard teaches a cushion material, and Morton discloses a mattress pad on which an animal may lay, it is not specifically disclosed that the cushion material is fleece. Moore teaches a pet bed comprising a fleece mat (18). It would have been

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obvious to one of ordinary skill in the art at the time the invention was made to provide that the Ballard/Morton cushion material be fleece as it is well known that fleece material is soft, and cushioning and provides a more comfortable surface on which to rest.

Conclusion

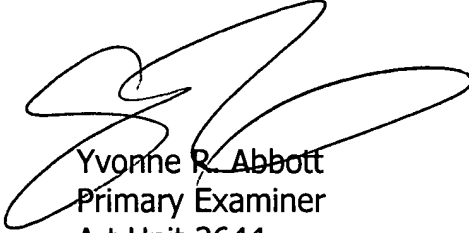
8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne R. Abbott whose telephone number is (571) 272-6896. The examiner can normally be reached on Monday-Thursday 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on (571) 272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yvonne R. Abbott
Primary Examiner
Art Unit 3644

1/5/06